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7  
8 UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 NORTHERN CALIFORNIA GLAZIERS,  
11 ARCHITECTURAL METAL AND GLASS  
WORKERS PENSION PLAN; DISTRICT  
12 COUNCIL 16 NORTHERN CALIFORNIA  
HEALTH AND WELFARE TRUST FUND;  
13 GLAZIERS INDIVIDUAL ACCOUNT  
RETIREMENT PLAN; DISTRICT COUNCIL  
14 16 NORTHERN CALIFORNIA  
JOURNEYMAN AND APPRENTICE  
15 TRAINING TRUST FUND; THEIR JOINT  
BOARDS OF TRUSTEES; and DOUGLAS  
16 CHRISTOPHER and ALFRED SKIP WELTZ  
as Trustees;

17  
18 I.U.P.A.T. UNION AND INDUSTRY  
NATIONAL PENSION FUND; ITS JOINT  
19 BOARD OF TRUSTEES; and JAMES  
WILLIAMS as Trustee;

20 DISTRICT COUNCIL NO. 16,  
21 INTERNATIONAL UNION OF PAINTERS  
AND ALLIED TRADES, GLAZIERS,  
22 ARCHITECTURAL METAL AND GLASS  
WORKERS LOCAL UNION 767,

23 Plaintiffs,

24 v.

25 KELLY RAYMOND PLEDGER, Individually,  
26 and dba PLEDGER GLASS,

27 Defendants.

Case No.: C08-1725 SC

**COMPLAINT**

Parties

1. The Northern California Glaziers, Architectural Metal and Glass Workers Pension Plan ('Pension Fund'); District Council 16 Northern California Health and Welfare Trust Fund ('Health Fund'); Glaziers Individual Account Retirement Plan ('IARP'); and District Council 16 Northern California Journeyman and Apprentice Training Trust Fund ('Apprentice Fund') are employee benefit plans as defined in the Employee Retirement Income Security Act of 1974 ('ERISA') §3(3), 29 U.S.C. §1002(3). The Joint Board of Trustees ('Trustees') of said funds are the named fiduciaries of the respective funds under ERISA §402(a), 29 U.S.C. §1002(a). Douglas Christopher is the Chairman of the Trustees and a fiduciary of said funds.

2. The Health Fund was formerly Northern California Glaziers Health and Welfare Trust Fund prior to its merger with other health and welfare trust funds effective January 1, 2008.

3. The IUPAT Union and Industry National Pension Fund ('National Fund') is an employee benefit plan as defined in ERISA §3(3). James Williams is the President and a fiduciary of the National Fund.

4. District Council No. 16, International Union of Painters and Allied Trades, Glaziers, Architectural Metal and Glass Workers Local Union 767 ('Union') is a labor organization as defined in §2(5) of the National Labor Relations Act ('NLRA'), 29 U.S.C. §152(5).

4. KELLY RAYMOND PLEDGER, individually and dba PLEDGER GLASS, are employers by virtue of ERISA § 3(5), 29 U.S.C. § 1002(5), and NLRA § 2(2), 29 U.S.C. § 152(2).

5. The Pension Plan, Welfare Plan, IARP, Apprenticeship Trust, and National Plan and their fiduciaries are herein referred to as "ERISA Plaintiffs."

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Jurisdiction

1           6.       Jurisdiction exists in this Court over the claims asserted by the ERISA Plaintiffs by  
2 virtue of ERISA § 502, 29 U.S.C. § 1132, in that the ERISA Plaintiffs seek to enforce the  
3 provisions of ERISA and the terms of their plans, seek to enjoin the acts and practices which  
4 violate ERISA, seek equitable relief to redress such violations, and seek all other appropriate relief  
5 under ERISA.

6  
7           7.       Jurisdiction exists in this Court over all the claims by virtue of Labor Management  
8 Relations Act ("LMRA") § 301, 29 U.S.C. § 185, in that the plaintiffs seek to enforce the terms  
9 and conditions of a collective bargaining agreement between the Defendant and the Union  
10 ('Bargaining Agreement').

11           8.       To the extent jurisdiction over any claim does not exist under ERISA or the  
12 LMRA, supplemental jurisdiction exists in this Court over such claims by virtue of 29 U.S.C. §  
13 1367 in that they arise out of a common nucleus of operative facts that form the basis of the  
14 federal claims asserted herein, each of which has a substantial ground in federal jurisdiction.  
15

16                               Venue

17           9.       Venue exists in this Court with respect to the claims under ERISA § 502 because  
18 all of the plans of the ERISA Plaintiffs are administered within this district and the breach took  
19 place in this district.

20           10.      Venue exists in this Court with respect to the claims under LMRA §301(a) because  
21 the claims arise in this district, the employers are doing business in this district and may be found  
22 in this district.  
23

24                               Intradistrict Assignment

25           11.      The basis for assignment of this action to this court's San Francisco Division is that  
26 all of the events and omissions giving rise to plaintiffs' claims occurred in the County of San  
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1 Francisco, where the ERISA Plaintiffs and the Bargained Plans, and where defendant failed to  
2 fulfill its statutory and contractual obligations to the plaintiffs.

3 Bargaining Agreement

4 12. Under the Bargaining Agreement and the governing documents of the ERISA  
5 Plaintiffs which are incorporated into the Bargaining Agreement and made binding on Defendant,  
6 Defendant is required to regularly pay to the ERISA Plaintiffs, Bargained Plans, defined below,  
7 and the Union for dues, certain sums of money, the amounts of which are determined by the hours  
8 worked by the employees of Defendant. Defendant further agreed to pay liquidated damages in  
9 the amount of ten percent (10%) through 2004 and seven percent (7%) thereafter for each  
10 delinquent contribution, but in the amount of twenty percent (20%) for each delinquent  
11 contribution which is the subject of litigation. Interest accrues on the combined total of delinquent  
12 contributions and liquidated damages at the rates reasonably set by the Trustees from the date  
13 immediately following the day that such payment.  
14

15 13. On behalf of the Plaintiffs, the Trustees are authorized to collect monies due from  
16 Defendant under the Bargaining Agreement for the Work Preservation Fund, Inc., a California  
17 non-profit corporation, the Northern California Glaziers Contractors Administrative Fund, IUPAT  
18 Joint Apprenticeship & Training Fund, and the Painters and Allied Trades Labor-Management  
19 Cooperation Fund (collectively referred to herein as the "Bargained Plans.") The ERISA Plaintiffs  
20 and Bargained Plans are third-party beneficiaries of the Bargaining Agreement.  
21

22 14. Under the terms of the Bargaining Agreement and of the governing documents of  
23 the ERISA Plaintiffs which are incorporated into the Bargaining Agreement and made binding on  
24 Defendant, Defendant is required to permit an authorized representative of the ERISA Plaintiffs to  
25 examine such records of Defendant as is necessary to determine whether Defendant has made full  
26 payment of all sums owed to the Plaintiffs.  
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1           20. Defendant has refused and continues to refuse to provide records and to permit an  
2 authorized representative of the Plaintiffs to examine Defendant's records as necessary to  
3 determine whether Defendant has made full payment of all sums owed to the Plaintiffs for the  
4 period October 1, 2004, through the present.

5           21. Defendant's failure and refusal to provide records and to permit examination of its  
6 records as alleged herein was at all times, and still is, willful. Defendant continues to breach the  
7 Bargaining Agreement, and the governing documents of the ERISA Plaintiffs which documents  
8 are incorporated into the Bargaining Agreement and made binding on Defendant, by failing to  
9 permit examination of its records. Said refusal is unjustified and done with malicious intent.

10           22. Plaintiffs are without an adequate remedy at law and will suffer continuing and  
11 irreparable injury, loss and damage unless the Defendant is:

12           (a) Ordered specifically to perform all obligations required on Defendants' part  
13 to be performed under ERISA, 29 U.S.C. §§ 1101-1381, the L.M.R.A., 29 U.S.C. §§ 141-197, the  
14 Bargaining Agreement, and the governing documents of the ERISA Plaintiffs referred to therein;

15           (b) Restrained from continuing to refuse to perform as required under the  
16 foregoing agreements;

17           (c) Specifically ordered to provide certain records and to permit examination of  
18 its records as alleged herein;

19           (d) Specifically ordered to pay all union dues, contributions, liquidated  
20 damages and interest determined and known to be due and found to be due to Plaintiffs following  
21 the examination of Defendant's records.

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Prayer

WHEREFORE, Plaintiffs pray as follows:

1. For an order requiring Defendant to provide certain records and to submit to an audit of such records by a date certain for the period October 1, 2004, through the date of entry of judgment; and

2. For judgment against Defendant in favor of the ERISA Plaintiffs, Bargained Plans, and the Union, in an amount equal to:

(a) Unpaid contributions for hours as specified above and thereafter through the time of judgment, including those determined by the audit of Defendant's records for the period October 1, 2004 through the date of entry of judgment, as well as unpaid liquidated damages for hours worked during the periods as specified above and thereafter through judgment, pursuant to ERISA § 502(g)(2)(A), 29 U.S.C. § 1132(g)(2)(A):

(1) To the ERISA Plaintiffs, in accordance with ERISA Section 502(g)(2)(A), 29 U.S.C. Section 1132(g)(2)(A) and the Bargaining Agreement;

(2) To the Bargained Plans, in accordance with the Bargaining Agreement; and

(3) To the Union for dues, in accordance with the Bargaining Agreement.

b. Liquidated damages in an amount equal to the greater of:

(1) Interest on the unpaid contributions, or

(2) Liquidated damages provided for under the Bargaining Agreement on the aforementioned unpaid contributions, in accordance with the Bargaining Agreement, the governing documents of the ERISA Plaintiffs, and with respect to the ERISA Plaintiffs, ERISA Section 502(g)(2), 29 U.S.C. Section 1132(g)(2).

1 c. Interest on any unpaid contributions and liquidated damages, at rates and in  
2 accordance with the Bargaining Agreement, the governing documents of the ERISA Plaintiffs,  
3 ERISA Section 502(g)(2)(B), 29 U.S.C. Section 1132(g)(2)(B), with respect to the ERISA  
4 Plaintiffs, and the applicable legal rate with respect to dues and where otherwise appropriate.

5 3. For any additional contributions payable to Plaintiffs and the Bargained Plans as  
6 third party beneficiaries of the Bargaining Agreement at time of judgment, plus interest and  
7 liquidated damages as above provided and in accordance with the Bargaining Agreement, the  
8 governing documents of the ERISA Plaintiffs and, with respect to the ERISA Plaintiffs, ERISA  
9 Section 502(g)(2), 29 U.S.C. Section 1132(g)(2).

10 4. The ERISA Plaintiffs' reasonable attorneys' fees and costs of this action in  
11 accordance with ERISA § 502(g)(2)(D), 29 U.S.C. § 1132(g)(2)(D); and in accordance with the  
12 collective bargaining agreement for all Bargained Plans, and with LMRA Section 301, 29 U.S.C.  
13 § 185 for all Plaintiffs.

14 5. For an order enjoining Defendant from violating the terms of the Bargaining  
15 Agreement and the governing documents referred to therein, from disposing of any assets until  
16 said terms have been complied with, and from continuation or operation of Defendant's business  
17 until said terms have been complied with.

18 6. That the Court retain jurisdiction of this case pending compliance with its orders.

19 7. For such other and further relief as the Court may deem just and proper.

20 Dated: March 27, 2008

SALTZMAN & JOHNSON  
LAW CORPORATION

21 By: \_\_\_\_\_/s/  
22 Michele R. Stafford  
23 Attorneys for Plaintiffs